

EXHIBIT 35

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION

4 No. 5:16-cv-10444
IN RE: FLINT WATER CASES Hon. Judith E. Levy
5 Mag. Mona K. Majzoub

6 Elnora Carthan, et al.,

7 Plaintiffs,

8 vs.

9 Civil Action No.
5:16-cv-10444-JEL-MKM

Governor Rick Snyder,
10 et al.,
11 Defendants.

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HIGHLY CONFIDENTIAL
16 VIDEOTAPED DEPOSITION OF DAUGHERTY JOHNSON
17 VOLUME I
18 Tuesday, December 17, 2019
at 9:09 a.m.

19

20 Taken at: Butzel Long
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21 Bloomfield Hills, Michigan 48304
22 REPORTED BY: CAROL A. KIRK, RMR/CSR-9139
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1 A. That's what the report says, yes.

2 Q. Now, there was an engineering firm
3 that the city was working with that we've been
4 referring to as LAN, L-A-N. It's an acronym to
5 Lockwood, Andrews and something else. I forget
6 the last name. But you're familiar with that
7 company, right?

8 A. Yes.

9 Q. And it was the city's engineering
10 consultant for various things, including issues
11 related to water, drinking water and water
12 quality, right?

13 A. Yes.

14 Q. And as of the time that the
15 decision was made to use the Flint River as the
16 interim water source, isn't it true before the
17 2014 startup that LAN had suggested testing of
18 the system for 90, 60, 30 days before the system
19 was actually put online and the water from the
20 Flint River was used, right?

21 MR. KUHL: Objection to form.

22 MR. ZEINEH: Form, foundation.

23 A. I recall some testing requests
24 that they had in their proposals, yes.

1 Q. And was that done?

2 A. No.

3 Q. Why not?

4 A. Time.

5 Q. So the reason that LAN's

6 recommendation for testing the system to make

7 sure that it was safe before it went online was

8 you just didn't have enough time to do it?

9 A. And we weren't required to do it.

10 Q. What do you mean by that?

11 A. The DEQ did not require us to run

12 those tests.

13 Q. So are you saying that even though

14 the engineering firm recommended -- that the

15 city had hired and worked with recommended

16 testing before switching to the Flint River

17 water, the MDEQ officials told the city that

18 they didn't have to do it?

19 MR. KUHL: Object to form.

20 Q. Is that what happened?

21 A. That's correct.

22 Q. Who in the MDEQ told the city

23 that? Which person? Which official?

24 A. I don't recall.

1 Q. Do you have a specific
2 recollection of the topics or the issues that
3 were discussed during the June 2013 meeting with
4 the MDEQ and the other parties, including LAN
5 and the city?

6 A. I recall discussing how that was
7 going to be designed, what regulatory input DEQ
8 was going to provide, and how often and how
9 fast, and then kind of the steps that needed to
10 be done to get the plant ready to treat the
11 Flint River water.

12 Q. Was it predominantly discussions
13 about the Flint Water Treatment Plant and the
14 design and the construction improvements that
15 would need to be made in order to get the plant
16 up and running at that point?

17 A. It was, yes.

18 Q. Do you recall whether there were
19 any discussions about chemical treatment to the
20 Flint River water that would need to be
21 instituted in order to use it and deliver it to
22 the consumers of Flint?

23 A. Yes, there was.

24 Q. And what were those discussions

1 focusing on?

2 A. Some disinfection questions, the
3 ozone system. There was discussion about
4 corrosion control, but at the time, it didn't
5 register in my brain of anything.

6 Q. I believe in your -- in the
7 preliminary examination, the criminal
8 proceedings, you testified that during that
9 particular meeting, there were discussions
10 specifically about corrosion control and
11 specifically about the use of orthophosphates as
12 a corrosion control measure.

13 Do you recall that?

14 A. I do.

15 Q. And I think you testified before
16 that during that meeting, LAN and Warren Green
17 specifically raised the issue of the need for
18 orthophosphates being incorporated or included
19 in any plan to utilize the Flint River as a
20 water source for the city of Flint?

21 A. Yes. That was discussed and
22 brought up, yes.

23 Q. Do you recall what the MDEQ's
24 response or -- response to Mr. Green's comments

1 or recommendations were at that time?

2 A. Yes. My recollection was that
3 they didn't -- they didn't need to do that
4 initially until after the plant was running and
5 did a test sampling after the plant was
6 operational.

7 Q. Okay. So despite the fact that
8 Warren Green specifically recommended
9 orthophosphates and the need for it, the MDEQ
10 declined to do that until they had testing that
11 was completed?

12 Is that your understanding?

13 MR. KUHL: Objection to form.

14 Q. And what was the basis if you have
15 any understanding for the basis --

16 (Reporter clarification.)

17 A. So my understanding was that, yes,
18 that was not required by the DEQ at that time
19 until after the plant was running, and then
20 there was a testing protocol that followed to
21 verify we needed it.

22 Q. Do you have an understanding of
23 what the testing protocol was that the MDEQ was
24 referring to?

1 A. At the time I did not, no.

2 Q. Did you have any understanding as
3 to whether that was their interpretation of the
4 provisions or regulations of the Lead and Copper
5 Rule?

6 A. That was my understanding, that
7 they were telling us what that rule was.

8 Q. Did you have any discussions
9 with -- or do you recall any discussions with
10 Warren Green prior to this June 2013 meeting
11 with the MDEQ and the city?

12 A. I'm sure we did meet. I don't
13 recall --

14 (Reporter clarification.)

15 A. I'm sure we did meet, but I don't
16 recall specific conversations about -- prompt
17 about it. I guess I don't recall every
18 conversation.

19 Q. Do you recall having any
20 conversations with Warren Green or anybody from
21 LAN about corrosion control treatments or the
22 necessity of same before the June 2013 meeting?

23 A. I don't recall that, no.

24 Q. Do you recall if during the June

1 of 2013 meeting softening was discussed as far
2 as lime softening versus lime and soda ash
3 softening?

4 A. There was.

5 Q. And do you recall what the DEQ's
6 position was on that?

7 A. That it was a secondary treatment
8 standard. We didn't need to do it initially.
9 It was for aesthetic purposes.

10 Q. And was that referencing only lime
11 softening or lime and soda ash softening
12 combined?

13 A. I don't recall if it was both. I
14 know it was lime for sure.

15 Q. So it was your understanding at
16 least from talking to the DEQ that that was just
17 an aesthetic treatment process and it would have
18 nothing to do with the actual acidity of the
19 water itself or the pH?

20 MR. KUHLMAN: Objection to form.

21 A. That was my understanding, yes.

22 Q. Do you recall Warren Green asking
23 the MDEQ during this June of 2013 meeting what
24 the basis was for its decision not to require

1 corrosion control treatment following the change
2 in water sources to the Flint River?

3 A. Yes. That was the discussion -- I
4 guess the -- I recall the response being --

5 Q. When you talked before about
6 the --

7 MR. ZEINEH: I'm sorry. Do you
8 want an answer?

9 Q. Oh, yes.

10 A. So my understanding of that
11 conversation was that Warren asked about why
12 not, and the DEQ replied that there would be a
13 sampling protocol required that would determine
14 if we needed it or not.

15 Q. Following the June 2013 meeting --
16 and when I say immediately following it, did you
17 have any discussions with Warren Green about the
18 DEQ's position on the softening issues?

19 A. I don't recall, other than the
20 fact that, you know, it would -- it would have a
21 more polished product, but I don't recall
22 specifically what that chemical does.

23 Q. And going back to that, you talked
24 about that your understanding that the softening

1 was that it was an aesthetic type of treatment,
2 correct?

3 A. That was my understanding, yes,
4 based on the secondary treatment standard that
5 DEQ said it was.

6 Q. And when you say "aesthetic," what
7 does that mean to you?

8 A. Like the water being hard or soft
9 basically, like I guess described to me as
10 slippery or making your skin dry.

11 Q. Did you have any understanding as
12 to whether that would impact the coloration or
13 the odor of the water itself?

14 A. Not necessarily. I didn't
15 understand it to be that way.

16 Q. So that was just your
17 understanding of aesthetic as far as the feel of
18 it?

19 A. Yes.

20 Q. Following this June of 2013
21 meeting with the MDEQ, the city and LAN, among
22 others, do you recall having any specific
23 conversation with Warren Green about the need
24 for corrosion control or revisiting the issue of

1 corrosion control being needed to treat the
2 Flint River water?

3 A. I don't recall any discussions
4 specifically about that.

5 Q. If Warren Green has stated and
6 testified before that, in fact, he did talk to
7 you following this meeting and asked to revisit
8 the issue of corrosion control, you have no
9 reason to doubt that, correct?

10 MR. KUHL: Objection to form.

11 MR. ZEINEH: Concur.

12 A. I do not.

13 Q. You just don't recall?

14 A. I just don't recall that
15 discussion.

16 Q. We talked before that LAN and
17 others had recommended the use of some sort
18 of --

19 MR. ZEINEH: Hold on. There's an
20 issue.

21 THE COURT REPORTER: Could we go
22 off the record?

23 MR. GAMBLE: Sure.

24 THE VIDEOGRAPHER: We're going off

1 the record. The time is 11:13.

2 (Recess taken.)

3 THE VIDEOGRAPHER: We're back on

4 the record at 11:15.

5 BY MR. GAMBLE:

6 Q. Mr. Johnson, at some point in
7 2013, did you personally contact LAN to ask
8 about them providing input as to a rate study
9 that the city was conducting to assess rates on
10 their water customers?

11 A. It's possible, but I don't recall
12 specifically.

13 Q. Do you recall engaging any type of
14 third party -- Raftelis or some other
15 third-party consultant -- to specifically study
16 your rates and actually obtain and gather
17 information to provide a rate assessment for the
18 city?

19 A. Yes. We were working on that.

20 Q. And do you recall when that
21 occurred?

22 A. I do not.

23 Q. If I could have you turn to
24 Exhibit 52 from Brent Wright's deposition, in

1 his notebook.

2 A. Okay.

3 Q. And if you'll look at the top page
4 of that, it appears to be an e-mail from Warren
5 Green to you, dated December 6 of 2013, that's
6 dealing with -- "Flint Treatment Cost" is the
7 subject.

8 Do you see that?

9 A. I do.

10 Q. And in it, Mr. Green references to
11 you that the information you requested is
12 attached. He says, "This is partly based on
13 chemical supplier quotes, costs from other
14 utilities, and from other historical data from
15 the city of Flint cost. Please let me know if
16 you have any questions."

17 Do you see that?

18 A. Yes.

19 Q. And attached are two what I'll
20 call charts that have costs or unit costs
21 associated with chemicals that would be utilized
22 and charged as part of the rate study in
23 utilizing the Flint River.

24 Do you see that?

1 A. Yes.

2 Q. And also for using Lake Huron
3 water which is the second chart.

4 Do you see that?

5 A. Yes.

6 Q. And why specifically were you
7 consulting or asking Warren Green to gather this
8 information for you?

9 A. Just to find out what the
10 operational costs of the plant were to determine
11 what the rates we were going to charge our
12 customers for all the services.

13 Q. Do you recall specifically having
14 any conversations with Warren Green about the
15 rate study and the information he was gathering
16 other than the e-mail that we've just identified
17 and read?

18 A. I don't specifically recall, but
19 we would have wanted to seek out the full costs
20 of that plant to run.

21 Q. Do you specifically recall Warren
22 Green telling you when you asked about gathering
23 the information, that gathering this information
24 about chemicals and water treatment, at least at

1 this point, was outside the scope of LAN's work
2 or scope of duties under their contracts with
3 the city of Flint?

4 A. I don't recall that discussion.

5 Q. And in looking at the unit costs
6 for the Flint River with partial softening.

7 Do you see that? That's the
8 second page --

9 A. Yes.

10 Q. -- on that exhibit, Exhibit 52?

11 A. Yes.

12 Q. You see at the bottom where it
13 lists chemicals, one of the chemicals listed
14 specifically is phosphates, correct?

15 A. Correct.

16 Q. So at that point, then,
17 Warren Green provided that information back to
18 you that phosphates were at least anticipated
19 and recommended to be part of any type of water
20 treatment that the city was doing and charging
21 to the customers of the city of Flint?

22 MR. ZEINEH: Objection; form,
23 foundation.

24 A. Yes, this is listed as a chemical

1 cost for the plant.

2 Q. And so you understood that
3 phosphates were still a part of the equation as
4 far as what was being recommended or what should
5 be included within the water treatment of the
6 Flint water -- or Flint River water?

7 MR. ZEINEH: Objection; form.

8 MR. KUHL: Objection to form.

9 A. Yes. We knew this could be a cost
10 of the plant once they're operational.

11 Q. And if you look back at the next
12 page, the unit costs for Lake Huron.

13 A. I see it.

14 Q. That also includes a listing for
15 the chemical phosphate, correct?

16 A. This does.

17 Q. And, again, phosphates, as you
18 said before, that's a corrosion control
19 treatment, correct?

20 A. Correct.

21 Q. And the purpose of gathering this
22 information again was to basically analyze the
23 rates that were being charged to residents of
24 the city of Flint who were purchasing water from

1 the city, correct?

2 A. That was for the rate study, yes.

3 Q. Do you have any understanding or
4 recollection as to whether the city actually
5 utilized these calculations, or at least these
6 estimates, in setting rates for the city of
7 Flint following your receipt of them in December
8 of 2013?

9 A. I don't recall how they would have
10 been used, no.

11 Q. Do you know if the residents of
12 the city of Flint who were consumers were being
13 charged for -- as part of the rates, for
14 phosphates to be included in the water treatment
15 process?

16 A. They would have only been charged
17 for what was actually expended.

18 Q. Okay. But certainly what was
19 expended goes into what the end consumer pays,
20 correct?

21 A. Correct.

22 Q. So if phosphates were included as
23 part of that rate determination, it's possible
24 the public was actually paying for phosphates

1 when they weren't receiving them, correct?

2 MR. ZEINEH: Objection; form.

3 MR. KUHL: Objection; form.

4 MR. ZEINEH: Foundation.

5 A. No. We would have based our costs
6 on what we bought. So if we bought phosphates,
7 then we would have charged for phosphates. If
8 we didn't buy phosphates, we wouldn't have
9 charged for them.

10 Q. Mike Glasgow has testified earlier
11 that he said that phosphates were always a part
12 of the design of the Flint Water Treatment Plant
13 and the Flint Water Treatment Plant in
14 particular with the use of Flint River water as
15 its supplier.

16 Do you agree with that?

17 MR. KUHL: Objection to form.

18 A. I don't know what he would have
19 testified to, but it's certainly been a part of
20 the system.

21 Q. Did you believe that phosphates
22 were always going to be a part of the design of
23 the Flint Water Treatment Plant and the upgrades
24 in 2013 before ultimately distributing water in

1 2014?

2 A. I would not have known that.

3 MR. KUHL: Objection to form.

4 MR. ERICKSON: What was your
5 answer, sir?

6 A. I would not have known that from a
7 technical standpoint, no.

8 Q. With regard to the actual water
9 quality and treatment of the water from the
10 Flint River, it's fair to say that the DEQ
11 ultimately made the decisions as to how the
12 Flint River would be treated, correct?

13 MR. KUHL: Objection to form.

14 A. My understanding was DEQ told us
15 what had to be done, and we would have to do
16 that.

17 Q. In other words, there wasn't some
18 outside governmental entity that was telling you
19 what you had to do, correct?

20 A. No. The government regulator was
21 the DEQ for us.

22 Q. Do you understand the term
23 "primacy"?

24 A. I do.

1 Q. Did the DEQ have primacy in your
2 opinion as to the treatment of the Flint River
3 water and ultimately what was distributed to the
4 public?

5 A. Yes, that was my understanding.

6 Q. And LAN had raised the issue of
7 corrosion control with the MDEQ before, correct?

8 A. Yes.

9 Q. We had talked about the meeting
10 and having a discussion about it, correct?

11 A. Yes.

12 Q. Do you know if there were other
13 discussions between LAN and the DEQ about the
14 need for corrosion control treatment, in
15 particular phosphates?

16 A. I don't know of any other.

17 Q. And despite the recommendations
18 that LAN had made that you're aware of, the DEQ
19 never required the city to incorporate or
20 include phosphates in the treatment of the
21 water, correct?

22 A. That is correct.

23 Q. And the city didn't have the
24 ability to override the DEQ's decisions, did

1 they?

2 MR. KUHL: Objection to form.

3 A. We did not believe we had that
4 authority.

5 MR. ERICKSON: I didn't hear the
6 response.

7 A. We did not believe we had that
8 authority.

9 Q. Did you have any understanding as
10 to whether the city had any ability to appeal
11 any decision by the DEQ for not using corrosion
12 control treatments or phosphates in ultimately
13 treating river water from the Flint River?

14 A. I did not know of any.

15 Q. We talked before about the test
16 run that was part of the original LAN scope of
17 services.

18 Do you recall that?

19 A. Yes.

20 Q. And, really, the two primary scope
21 of services that were initially discussed in May
22 of 2013 were conducting an initial plant test
23 run and then doing an engineering report.

24 Do you recall that?

1 A. Correct.

2 Q. And I believe you testified that a
3 test run was completed or was attempted in the
4 summer of 2013, correct?

5 A. Correct.

6 Q. And do you recall the results of
7 that initial test run?

8 A. They found some equipment not
9 functional, and I think that was -- that was the
10 purpose of it, to find out what didn't work.

11 Q. And, in fact, that test run was
12 terminated early on, correct?

13 A. Yes. It did not go the full
14 stretch.

15 Q. The test run was initially planned
16 on, or at least was initially going to run for
17 at least a month, correct?

18 A. I don't recall it being that long,
19 but it was -- I thought it was two weeks, but it
20 was a stretch. Longer than they had run
21 previously.

22 Q. And ultimately the processes and
23 the equipment broke down during the initial
24 plant test run; correct?

1 A. That's correct.

2 Q. And the purpose or part of the
3 purpose of that test run, at least your
4 understanding, was that so the city and LAN
5 could gather information about what worked, as
6 well as what treatment processes might be
7 necessary with regard to the Flint River water,
8 correct?

9 A. That's correct.

10 Q. And, in fact, LAN was not able to
11 even assess water quality during that period of
12 time because the facilities and the equipment
13 was so broken that it was incapable of getting
14 any type of useful information?

15 MR. ZEINEH: Objection to form,
16 foundation.

17 A. That, I don't know. I guess
18 useful to us would have been "This doesn't work,
19 so we've got to fix that." So there was useful
20 information gathered, but ...

21 Q. But you understood as far as LAN's
22 second task, at least under their initial
23 contract with the city, providing an engineering
24 report, LAN was unable to provide any type of

1 engineering report to the city of Flint after
2 that test run because of the failures of the
3 equipment, correct?

4 MR. ZEINEH: Objection; form,
5 foundation.

6 A. I don't recall that, being that
7 way. I thought we did receive a report of what
8 needed to be addressed.

9 Q. Okay. As far as general about the
10 design itself or whatever improvements --

11 A. Correct.

12 Q. -- to your understanding?

13 A. Correct.

14 Q. If I could turn your attention to
15 discussions between the city and LAN following
16 this failed test run regarding LAN's work.
17 Okay?

18 As far as estimating costs to
19 upgrade or improve the plant so that it could
20 accept water from the Flint River and ultimately
21 from the KWA, do you recall what LAN's ultimate
22 estimate was?

23 A. I don't recall specifically, but I
24 did participate in that.

1 Q. So you have no recollection as to
2 the specific dollar amount that was recommended
3 or at least estimated by LAN to get the Flint
4 Water Treatment Plant up and running so that it
5 could accept water from either Flint River or
6 the KWA?

7 A. I recall a couple ranges of
8 numbers. \$8 million to \$20 million.

9 Q. Do you recall initially there
10 being estimates as high as \$49 million that
11 would be necessary to upgrade the Flint Water
12 Treatment Plant to accept water from the Flint
13 River?

14 A. They were -- I recall there being
15 estimates that high for a multitude of asset
16 upgrades, some required for the Flint River --

17 (Reporter clarification.)

18 A. Of asset upgrades, some for the
19 Flint River, some for storage, things like that.

20 Q. And do you recall that ultimately
21 those numbers, or at least the estimates, were
22 whittled down to somewhere between \$30 and \$34
23 million?

24 A. I don't recall those numbers.

1 Q. Were you involved intimately in
2 the discussions of the costs or the estimated
3 costs associated with the Flint Water Treatment
4 Plant upgrades?

5 A. I was.

6 Q. Who else was involved in those
7 decisions?

8 A. That would have been Howard,
9 Brent, Mike Glasgow, Warren, DEQ for the staff.

10 Q. Who ultimately made the decision
11 on behalf of the city as to exactly what
12 upgrades or what costs would be incurred by the
13 city to improve the Flint Water Treatment Plant?

14 MR. ZEINEH: Objection to form.

15 A. The emergency manager had the
16 ultimate decision for expenses.

17 Q. And who was that at the time in
18 roughly August of 2013?

19 A. I believe it was Ed Kurtz at that
20 time.

21 Q. Do you recall any internal
22 discussions in the city in mid August 2013 about
23 the fact that LAN's estimate for the cost of
24 upgrading the Flint Water Treatment Plant were

1 significantly higher than those that were
2 originally estimated by Wade Trim in Appendix 9
3 that we talked about before in the 2009 report?

4 A. Yes.

5 Q. And what were those discussions
6 centering on. Do you have a recollection?

7 A. I don't recall the specifics, but
8 there were discrepancies between the two
9 reports.

10 Q. And do you have any understanding
11 or recollection as to what the discrepancies
12 were due to?

13 A. I don't.

14 Q. Were they potentially due to the
15 fact that the 2009 Wade Trim estimates were
16 relating strictly to upgrades to accept KWA
17 water as opposed to accepting both Flint River
18 water in the interim and KWA water?

19 MR. ZEINEH: Object to form,
20 foundation.

21 A. Yes, those would have been part of
22 it.

23 Q. LAN provided a draft proposal to
24 the city in June of 2013 that listed a number of

1 recommendations or potential upgrades that would
2 be needed at the Flint Water Treatment Plant.

3 Do you recall seeing that?

4 A. Yes.

5 Q. We've talked about also there were
6 these definitions or scope documents that were
7 provided by LAN and also described the scope of
8 their anticipated work, correct?

9 A. Yes.

10 Q. In your preliminary examination, I
11 believe you testified that at some point, you
12 sat down with Mike Prysby and Steve Busch to go
13 through the documents, the LAN documents, to
14 specifically identify and narrow down or at
15 least limit the scope of the work that would be
16 done by LAN on the Flint Water Treatment Plant,
17 correct?

18 A. Yes.

19 MR. KUHLE: Object to form.

20 MR. ZEINEH: Object to form.

21 Q. And with regard to your
22 preliminary exam testimony, I believe you
23 testified that ultimately when you went through
24 those documents, LAN's scope of services was

1 narrowed down strictly to design and
2 construction and improvements to the Flint Water
3 Treatment Plant itself to accept Flint River
4 water and KWA water, correct?

5 A. That's correct.

6 Q. They weren't specifically retained
7 to do water testing or water quality testing,
8 correct?

9 A. I believe some of the scope of
10 service was for that.

11 Q. Okay. Well, let's talk about
12 this.

13 You testified in your preliminary
14 exam, you referred to having sat down with
15 Mr. Prysby and Busch and going through a
16 document. Do you recall whether that was the
17 June 10th proposal that you went through with
18 Mr. Prysby and Busch to identify specifically
19 what LAN's scope would be on this particular
20 project?

21 A. I don't recall exactly which one.

22 Q. Well, let's turn to the June 10th
23 proposal, which is Kurtz Exhibit Number 3. And
24 if you could turn to page 7 -- or pardon me.

1 Not page 7. Page 6 of the document. You'll see
2 "Scope of Services."

3 A. 6 or 7?

4 Q. On page 6.

5 A. Okay. Yep.

6 Q. And then there's a general
7 description in paragraph form of the scope of
8 services. But the following page, page 7, it
9 starts listing the various tasks that LAN is
10 proposing to do.

11 Do you see that, Task 1?

12 A. Yes.

13 Q. And, again, Task 1 references a
14 plant test run.

15 Do you see that?

16 A. Yes.

17 Q. And Task 2 is an engineering plan
18 and report. We've already discussed that that
19 was in the other scoping documents?

20 A. Yes.

21 Q. And Task 3 relates to design phase
22 services?

23 A. Yes.

24 Q. Was this the document that you

1 went through specifically with Mr. Prysby and
2 Busch to identify what it was that LAN would be
3 tasked with doing under its contract with the
4 city?

5 A. Yes.

6 Q. And do you recall specifically
7 what items were eliminated from LAN's scope from
8 this proposal?

9 A. I don't recall specifically. I
10 know there were several.

11 Q. LAN wasn't at this particular
12 meeting with the MDEQ with Prysby and Busch
13 discussing the scope of services, correct?

14 A. I don't believe so, no.

15 Q. Do you recall when that meeting
16 occurred?

17 A. I do not.

18 Q. Do you know whether it occurred
19 shortly after LAN's proposal in June of 2013 was
20 provided to the city?

21 A. It would have been after, yes.

22 Q. And do you have any estimation as
23 to how far after the initial proposal was
24 submitted that the MDEQ and the city sat down

1 and had this discussion about LAN's scope of
2 work?

3 A. I don't recall. I don't.

4 MR. GAMBLE: Can we take a quick
5 five-minute break?

6 MR. ZEINEH: Sure.

7 THE VIDEOGRAPHER: Off the record.

8 The time is 11:34.

9 (Recess taken.)

10 THE VIDEOGRAPHER: We're back on
11 the record at 11:43.

12 BY MR. GAMBLE:

13 Q. Mr. Johnson, we were talking
14 briefly before about your meeting with
15 Mr. Prysby and Mr. Busch about LAN's scope of
16 work.

17 Do you recall that?

18 A. Yes.

19 Q. And my understanding is that you
20 were present at that meeting, correct?

21 A. Yes.

22 Q. Who else from the city was present
23 at that meeting with Mr. Busch and Mr. Prysby to
24 discuss LAN's scope of work?

1 A. I just recall that Mike and Brent
2 were there, I believe.

3 Q. And LAN wasn't there, correct?

4 A. At one of the meetings, they were
5 not there, no.

6 Q. When did -- do you have any
7 recollection of when that meeting occurred?

8 A. I do not. It was soon after this
9 was developed.

10 Q. Okay. So it was soon after
11 June 10th of 2013?

12 A. Yes.

13 Q. And do you have any recollection
14 of where that meeting took place?

15 A. I do not.

16 Q. Earlier you testified about -- we
17 were asking about the decision to go to the
18 Flint River. Ultimately do you have a
19 recollection of when the decision was made to
20 actually utilize the Flint River as an interim
21 water source while waiting on the KWA to be
22 completed?

23 A. It would -- the emergency manager
24 would have made that decision after we decided

1 the scope of services that the city could
2 afford.

3 Q. And do you recall when that was
4 generally?

5 A. I do -- the goal would have been
6 established sometime in July maybe, but the
7 actual decision to make that happen sometime in
8 that summer.

9 Q. And when you say "July," July of
10 2013 is what you're saying?

11 A. Correct, yes.

12 MR. ZEINEH: Could we hold off.
13 He's not mic'd.

14 Q. And who was the emergency manager
15 in July of 2013? Do you have a recollection?

16 A. I believe it was Ed Kurtz.

17 Q. And you don't know for sure who
18 made that decision, correct?

19 A. It was Ed Kurtz's decision to make
20 that.

21 Q. Okay. So Ed Kurtz specifically
22 made the decision to switch?

23 A. That we will be -- yes, that we're
24 going to -- we're going to be --

1 Q. Go ahead. I'm sorry.

2 A. That we're going to engage these
3 services to make that our target goal, yes.

4 Q. And did you have any
5 decision-making authority in that regard?

6 A. I did not.

7 Q. Okay. So if Mr. Kurtz made the
8 decision, he ultimately left as emergency
9 manager in June -- or June 30th of 2013,
10 correct, or do you have any understanding of
11 that?

12 A. Sometime around then, yes.

13 Q. So the decision to switch to the
14 Flint River would have had to have been made
15 before that, correct?

16 A. Correct.

17 Q. If I could turn your attention to
18 Exhibit 49 in Brent Wright's deposition
19 exhibits.

20 A. It's upside down. Now it's really
21 upside down. E-mail from Warren?

22 Q. Correct. And what's the date of
23 that?

24 A. August 20, 2013.

1 Q. And they're providing the city,
2 and in particular providing Brent Wright, with
3 another proposed scope of upgrades to the Flint
4 Water Treatment Plant; is that correct?

5 A. Yes.

6 Q. And, again, this would have been
7 after the June 2013 proposal that was made by
8 LAN that we've been discussing, correct?

9 A. Correct.

10 Q. And at least, as to your
11 recollection, was it the situation that LAN's
12 initial scope that was proposed in June of 2013
13 was slowly getting narrowed down to specific
14 tasks over the following months?

15 A. Yes.

16 Q. And that would have coincided with
17 the meetings that you were having with the DEQ,
18 with Mr. Prysby and Busch, as far as identifying
19 what the most important things were for LAN to
20 be doing with regard to designing construction
21 of improvements on the Flint Water Treatment
22 Plant, correct?

23 MR. KUHLE: Objection to form.

24 A. Things that DEQ required to be

1 done to the plant, yes.

2 Q. And you understood that, at least
3 with regard to this document, this, again,
4 proposed scope of upgrades that we're referring
5 to in 49, that this was still a work in process
6 as far as finalizing LAN's scope of the work
7 they would be doing on the Flint Water Treatment
8 Plant, correct?

9 MR. ZEINEH: Object to form.

10 A. That's correct.

11 Q. If you look at the last page of
12 this particular proposed scope. There's a
13 section that says, "Three other items to address
14 and finalize scope of work."

15 Do you see that?

16 A. Yes.

17 Q. Okay. And it specifically
18 identifies things that have not yet been
19 determined or assigned for somebody to do; is
20 that fair?

21 A. Yes.

22 Q. One thing is options for handling
23 disposal of lime sludge from the softening
24 operations. That's the first thing, correct?

1 A. Yes.

2 Q. The other thing is requirements
3 for CT and enhanced treatment, correct?

4 A. Yes.

5 Q. The third is impacts of using the
6 river as continuous supply quantity, and in
7 particular, I'm noting quality monitoring of the
8 river.

9 Do you see that?

10 A. Yes.

11 Q. And chemical storage options --

12 A. Yes.

13 Q. -- correct?

14 So as of this date, those were
15 items that were still up in the air as to who
16 would be responsible for doing that, correct?

17 A. Correct.

18 Q. And ultimately the city took on
19 the second and third additional items for
20 requirements for CT and enhanced treatment,
21 correct?

22 A. I don't know that, but that's --

23 Q. Did the DEQ provide CT
24 calculations?

1 A. That was a more technical
2 situation. I don't know how those got
3 calculated.

4 Q. Is that beyond your level of
5 understanding?

6 A. Yes.

7 Q. Fair. And as far as the impacts
8 of using the river as a continuous water supply,
9 quality water monitoring and the like, that
10 ultimately was left for the city to take over,
11 correct?

12 A. Yes.

13 Q. Okay. So that wasn't something
14 that was ultimately assigned in the scope of
15 work to LAN, correct?

16 A. I do not believe so, no.

17 Q. Do you recall following --
18 ultimately the work that was completed on the
19 Flint Water Treatment Plant in preparation for
20 delivering Flint River water to consumers, did
21 the city ever conduct a 60- to 90-day plant test
22 run to assess the functioning of the plant as
23 well as the quality of the water that was being
24 distributed?

1 A. Did not.

2 Q. And, again, the city didn't do
3 that because the DEQ told them they didn't have
4 to do it, right?

5 MR. KUHLE: Objection to form.

6 A. That is correct.

7 Q. And during this time period, are
8 you aware of whether the city actually talked
9 with any of its suppliers, chemical suppliers,
10 about doing jar testing of water quality that
11 was coming from the Flint River?

12 MR. ZEINEH: Objection; form,
13 foundation.

14 A. I don't know of any specific
15 conversations about that.

16 Q. Would Mike Glasgow be more
17 knowledgeable about what testing was being done
18 as far as water quality?

19 A. Yes.

20 MR. GAMBLE: Okay. Mr. Johnson, I
21 appreciate your time.

22 We're going to reserve the
23 remainder of our time.

24 We'll pass the witness.

1 MR. ERICKSON: Let's go off the
2 record.

3 THE VIDEOGRAPHER: We're going off
4 the record. The time is 11:51.

5 (Recess taken.)

6 THE VIDEOGRAPHER: Back on the
7 record. The time is 11:52.

8 - - -

9 CROSS-EXAMINATION

10 BY MR. THOMPSON:

11 Q. Sir, my name is Craig Thompson. I
12 represent Rowe Professional.

13 Are you familiar with the company
14 Rowe Professional or sometimes called Rowe
15 Engineering?

16 A. I am.

17 Q. Okay. I'm going to direct your
18 attention, if you could, to those exhibit
19 binders. I believe it would be the Brent Wright
20 exhibit binder. And if you could look at
21 Exhibit 45.

22 And before I ask you anything on
23 this, counsel for LAN had some questions for you
24 about a meeting that took place in June of 2013.

1 Do you recall those discussions?

2 A. I do.

3 Q. Okay. And this appears to be
4 an -- Exhibit 45 appears to be a sign-in sheet
5 for a meeting that took place at the water
6 treatment plant, correct?

7 A. Yes.

8 Q. Let's see. You're on that --
9 you're on that list, right? Do you see your
10 name?

11 A. Yes.

12 Q. And it's -- the date on that is
13 June 26th of 2013?

14 A. Yes.

15 Q. Okay. And then also you see all
16 these other individuals that are signed up on
17 this list. Are those the names that you recall
18 counsel for LAN rattling off when they were
19 asking you who attended this meeting?

20 A. Yes.

21 Q. Okay. And do you see the name Jim
22 Redding there --

23 A. I do.

24 Q. -- from Rowe?

1 Do you recall Mr. Redding being at
2 that meeting?

3 A. I don't recall specifically.

4 Q. Do you know who Jim Redding is?

5 A. I think I could recognize him if I
6 saw him.

7 Q. Okay. Do you know what capacity
8 Jim Redding was at this meeting, in what
9 capacity he was there?

10 A. I do not.

11 Q. Okay. Were you aware that LAN had
12 hired Rowe as a subconsultant --

13 A. Yes.

14 Q. -- in regards to the upgrades that
15 were being contemplated to the water treatment
16 plant in 2013?

17 A. Yes.

18 Q. And do you have an understanding
19 as to what role Rowe would play in that capacity
20 as a subconsultant to LAN?

21 A. I don't recall what their scope
22 was supposed to be, but I know they're a sub of
23 theirs.

24 Q. Okay. Are you generally familiar

1 with the fact that they're a civil engineering
2 and surveying firm?

3 A. Yes.

4 Q. Okay. Did you have an
5 understanding that they may be doing
6 surveying-type work, some pipe design, things
7 like that, in connection with the water
8 treatment plant?

9 MR. KUHL: Objection.

10 A. I don't recall specifically.

11 Q. Is that something that you weren't
12 even involved in?

13 A. Generally not. I mean, who the
14 sub was of another contractor, I may not know.

15 Q. Okay. Do you have any reason to
16 believe that Rowe was being looked to by LAN or
17 anyone else as having some expertise in water
18 treatment?

19 MR. ZEINEH: Objection; form,
20 foundation.

21 A. No, not the treatment.

22 Q. Okay. And as far as this meeting
23 that took place on this date, if I recall your
24 earlier testimony, are you saying that it was at

1 that meeting that there was a discussion about
2 the utilization of corrosion controls?

3 A. I believe that's about that time
4 frame, but I don't recall specifically.

5 Q. And that's what I'm trying to get
6 at, is whether you have an actual -- like an
7 independent recollection of being in this
8 meeting and that being a topic that came up, in
9 other words, the utilization of corrosion
10 controls to treat the Flint River water?

11 A. I don't recall the specific
12 meeting. It seems like it was more development
13 of the plan when that discussion was, but I
14 don't recall specifically the sequencing.

15 Q. Okay. Do you have a recollection
16 of actually being in that meeting and what
17 different people said during that meeting?

18 A. I don't.

19 Q. Do you have a recollection of
20 anything that Jim Redding might have said during
21 that meeting?

22 A. I do not.

23 Q. Okay. Do you take notes when
24 you're in a meeting?

1 A. I generally don't.

2 Q. Okay. Have you ever gone back and
3 looked to see if you have any notes for what
4 took place during that meeting?

5 A. I have not -- all my stuff I would
6 have kept would have been left with the city of
7 Flint when I left.

8 Q. Okay. So if you would have had
9 them, they would have still --

10 A. Right.

11 Q. -- still been there?

12 A. Yeah.

13 Q. Have you ever seen notes from you
14 in that meeting or any other meeting since you
15 left the city?

16 A. Not since I left the city, no.

17 Q. Okay. What are you doing today?
18 Where are you employed?

19 A. I work the Little Traverse Bay
20 Bands of Odawa Indians.

21 (Reporter clarification.)

22 A. Little Traverse Bay Bands of Odawa
23 Indians.

24 Q. In what capacity?

1 A. I'm the executive director. It's
2 governmental administration position.

3 Q. Okay. Do you know who Rick
4 Freeman is --

5 A. I do.

6 Q. -- at Rowe?

7 A. Yes.

8 Q. And had you had an opportunity to
9 work with Rick Freeman in the past?

10 A. Yes.

11 Q. And in what type of -- on what
12 type of projects?

13 A. Civil engineering projects, the
14 wastewater plant, some of our other facilities,
15 Third Avenue pump station, things like that.

16 Q. Okay. And that would be Rick
17 Freeman in his capacity as the acting city
18 engineer?

19 A. Correct.

20 Q. You're familiar with the fact that
21 Flint had a contract --

22 A. Correct. Yes.

23 Q. -- with Rowe to serve as an acting
24 engineer, correct?

1 A. Yes.

2 Q. Okay. Had you ever had an
3 experience or dealing with anyone from Rowe in
4 regards to the water treatment plant in their
5 capacity as a city engineer?

6 MR. ZEINEH: Object on form.

7 A. I don't recall any specific
8 discussions about that.

9 Q. Okay. In other words, do you have
10 any recollection of Rowe being engaged by the
11 city in its capacity as the city engineer or
12 acting city engineer to provide engineering
13 services at the water treatment plant?

14 MR. ZEINEH: Objection; form.

15 Q. Do you follow where I'm going with
16 this?

17 A. I do, but I don't recall any
18 discussions about that.

19 Q. Okay. And, again, so like, for
20 example, at this June meeting that we had been
21 talking about, you didn't have any reason to
22 believe that Jim Redding was there in a capacity
23 as a city engineer --

24 A. No.

1 Q. -- for the city of Flint --

2 A. No.

3 Q. -- correct?

4 A. Correct.

5 Q. Okay. You were aware that he was

6 acting or serving in the capacity as

7 subconsultant to LAN?

8 A. That was my understanding. And at

9 this time, I wouldn't have known what Rowe would
10 have been, I don't think.

11 Q. Okay. All right. Do you have any
12 reason to believe that anyone looked to Rowe
13 Engineering for input or recommendations on
14 whether to utilize the Flint River on an interim
15 basis?

16 A. Other than the previous reports
17 they participated in, no.

18 Q. Okay. And do those reports have
19 any reference at all to utilizing the river on
20 an interim basis, if you recall?

21 A. I don't recall that, no.

22 Q. Okay. Do you have any
23 recollection of anyone looking to Rowe for
24 direction on how to treat the Flint River

1 water --

2 A. No.

3 Q. -- as it was being utilized on a
4 temporary basis?

5 A. No.

6 MR. ZEINEH: Just let him ask the
7 full question.

8 MR. THOMPSON: I think that's all
9 I have. Thank you.

10 THE VIDEOGRAPHER: Should we go
11 off the record?

12 We're going to go off. The time
13 is 12:00.

14 - - -

15 Thereupon, at 12:00 p.m. a lunch
16 recess was taken until 1:00 p.m.

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1 Tuesday Afternoon Session
December 17, 2019

2 1:00 p.m.

3 - - -

4 THE VIDEOGRAPHER: We're back on
5 the record. The time is 1:00.

6 MS. SMITH: Could somebody help me
7 out here in and get Exhibit -- was it 53
8 from the Brent Wright deposition from
9 that binder?

10 MR. ZEINEH: So you know, the two
11 binders are in front of Mr. Johnson. He
12 has access to them.

13 MS. SMITH: Okay. And I believe
14 it was -- 53 was the November 3rd
15 e-mail.

16 THE WITNESS: The McLaren e-mail?

17 MR. ZEINEH: Is that 53?

18 THE WITNESS: Yeah.

19 MR. ZEINEH: You're talking about
20 a McLaren Hospital e-mail?

21 MS. SMITH: Yeah.

22 MR. ZEINEH: November 3rd, '14, it
23 looks like.

24 MS. SMITH: Yes.

1 MR. ZEINEH: Yes. He has it in
2 front of him.

3 MS. SMITH: Okay. I want to make
4 sure you have that in front of you
5 before I start asking my questions. But
6 let me start the examination, and we'll
7 eventually get to that document.

8 - - -

9 CROSS-EXAMINATION

10 BY MS. SMITH:

11 Q. Mr. Johnson, my name is Susan
12 Smith. I'm an attorney. I represent McLaren
13 Regional Medical Center in this litigation.

14 Are you able to hear me okay?

15 A. I am.

16 Q. Okay. I missed the first segment
17 of your deposition because of a technical issue.

18 I want to make sure I understand
19 what your current employment situation is.

20 A. I work for the Little Traverse Bay
21 Bands of Odawa Indians as the executive
22 director.

23 Q. Okay. And when did you start
24 working for that organization?

1 A. April of 2015.

2 Q. Sir, do you recall the last day
3 that you worked for the city of Flint?

4 A. I do not.

5 Q. And did you tender your
6 resignation, sir?

7 A. I did. Approximately --

8 Q. And to whom -- to whom did you
9 tender your resignation?

10 A. The human resources department and
11 the retirement office. It's probably more
12 appropriate, the retirement office notification
13 as opposed to a letter of resignation.

14 Q. Did you speak to anybody at the
15 water treatment plant about your decision to
16 resign before you tendered your resignation?

17 A. I don't recall specifically, but
18 I'm sure I would have.

19 Q. Okay. Did you speak to the person
20 who was then the emergency manager?

21 A. I did.

22 Q. And who was the emergency manager
23 at the time?

24 A. Jerry Ambrose.

1 Q. And what -- please tell us the
2 nature of your discussion with Mr. Ambrose about
3 your decision to resign. What did you tell him?

4 MR. ZEINEH: I would just object
5 to the form of the question and
6 mischaracterizing what he said, his
7 statements about his ending of
8 employment.

9 Q. Okay. Mr. Johnson, my question
10 previously was whether you spoke to the
11 emergency manager about your decision to resign.
12 And I understood that you indicated that, yes,
13 you had spoken to Mr. Ambrose.

14 Did I misunderstand you?

15 A. That's correct.

16 Q. So it's correct that you spoke to
17 Mr. Ambrose about your decision to resign?

18 A. That is correct.

19 Q. Okay. And what did you tell
20 Mr. Ambrose about your decision to resign?

21 A. I told him that I received an
22 opportunity to work for my tribe, and I was
23 going to work up there.

24 Q. During your employment with the

1 Flint Water Treatment Plant, did you have any
2 communication with a person -- any person you
3 understood to be affiliated with McLaren Flint
4 Hospital?

5 A. I don't recall any conversations
6 with McLaren staff.

7 Q. Okay. Did you ever visit McLaren
8 Flint Hospital while you were employed at the
9 Flint Water Treatment Plant?

10 A. I do not recall doing that, no.
11 Well, not in regards to that. I had an employee
12 injured and he was taken there, and I went
13 there, but it was a separate situation.

14 Q. Understood. Right. And let me
15 focus my questions.

16 Did you have any communication
17 with anybody at McLaren regarding the water
18 quality in Flint after April 2014?

19 A. I did not.

20 Q. Okay. Sir, I understand you
21 terminated your employment -- you resigned from
22 your position with the city of Flint in April of
23 2015.

24 Did you participate in any

1 meetings related to Flint water quality issues
2 after your resignation?

3 A. No.

4 Q. I understand from the documents
5 we've seen that your e-mail address while you
6 were employed with the city of Flint was
7 djohnson@cityofflint.com; is that correct?

8 A. Yes.

9 Q. Did you have any access to that
10 e-mail account after your resignation?

11 A. Not that I know of. I didn't use
12 it any further.

13 Q. Okay. Did you have other e-mail
14 addresses during that period of time with whom
15 you corresponded with persons at the Flint Water
16 Treatment Plant?

17 A. No.

18 Q. Okay. Did you have a cell phone
19 issued by the city of Flint?

20 A. No.

21 Q. Did you use your personal cell
22 phone at that time to communicate with your work
23 colleagues?

24 A. Yes.

1 Q. And what was your -- do you recall
2 your personal cell phone number in 2015?

3 A. Yes.

4 Q. And what was that?

5 A. It was 810-577-8906.

6 Q. You're here today for a deposition
7 and you're under oath speaking to attorneys
8 about Flint water quality issues.

9 Sir, have you given any other
10 statements under oath concerning your work at
11 the Flint Water Treatment Plant in 2014 and
12 2015?

13 A. I have. I've been in a court
14 case. I believe a preliminary exam would have
15 been under oath, I'm sure.

16 Q. Okay. So there was your testimony
17 at the preliminary exam proceeding. Any other
18 statements under oath that you recall?

19 A. I don't recall if they were all
20 under oath.

21 Q. Okay. Did you provide statements
22 to investigators related to your work at the
23 Flint Water Treatment Plant in 2014 to 2016?

24 A. Yes, I did.

1 Q. And could you tell me the names of
2 the persons to whom you spoke?

3 A. I don't recall the dates that I
4 spoke to the investigators. There would have
5 been none in '14, I don't believe.

6 Q. Okay. Let me ask you this: Did
7 you speak to the Flint water advisory task
8 force?

9 A. I don't know -- I don't know what
10 that is, actually. Who's on that?

11 Q. All right. Why don't you tell me
12 what statements or investigators you recall
13 speaking to about your work at the water
14 treatment plant, setting aside your testimony in
15 the preliminary exam testimony?

16 A. I spoke with -- the only one I
17 remember the name would be Jeff Sapinko. He was
18 working, I think, for the state of Michigan, AG.

19 Q. Okay. Do you recall any other
20 meetings with investigators besides Mr. Sapinko?

21 A. I do.

22 Q. And what else do you recall?

23 A. I met with Todd Flood, the special
24 prosecutor.

1 Q. Anyone else?

2 A. Not that I recall.

3 Q. Okay. And as I understand your
4 testimony from this morning, you were speaking
5 to Mr. Flood and Mr. Sapinko in part about the
6 basis for the criminal charges that were brought
7 against you; is that correct?

8 A. Correct.

9 Q. Okay. And eventually there was a
10 plea agreement entered in that proceeding
11 related to communications with Mr. Jim Henry of
12 the Genesee County Health Department.

13 Do you recall that testimony from
14 this morning?

15 A. Yes.

16 Q. Okay. And in Exhibit 84 that was
17 marked this morning, that was the plea
18 agreement, it refers to Mr. Henry's
19 investigation of health concerns.

20 Do you recall that?

21 A. Yes.

22 Q. Can you tell me, when did you
23 first learn about Mr. Henry's investigation of
24 health concerns related to Flint water?

1 A. I don't recall the timeline.

2 Q. Do you recall how you first
3 learned of Mr. Henry's investigation?

4 A. My recollection is that Howard
5 Croft told me about it.

6 Q. And as I understand your testimony
7 this morning, is Mr. Croft tasked you with
8 supplying documents to Mr. Henry in response to
9 the FOIA request.

10 Do you recall that?

11 A. Yes.

12 Q. Sir?

13 A. Yes.

14 Q. Okay. And please tell us what
15 Mr. Croft asked you to do with regard to
16 Mr. Henry's FOIA request.

17 A. My recollection was that he wanted
18 me to get with Rob Bincsik at the service center
19 and have them transmit those maps over to the
20 health department.

21 Q. And I understand your testimony
22 this morning is your recollection was Mr. Henry
23 was seeking maps. Do you recall Mr. Henry
24 requesting water testing data?

1 A. I don't recall that.

2 Q. Did you speak to anybody besides
3 Mr. Croft regarding Mr. Henry's FOIA request?

4 A. I passed it on to the water
5 service center, Rob Bincsik.

6 Q. Did you communicate directly with
7 Mr. Henry about his request?

8 A. I don't recall talking with him
9 about it.

10 Q. Mr. Johnson, I'm going to ask you
11 to take a look at Exhibit 53 from the Brent
12 Wright deposition.

13 Sir, have you seen this document
14 before today?

15 A. Giving it a read right now.

16 Q. Okay.

17 A. Are they the same thing three
18 times?

19 Q. There's some duplication within
20 the document, yes. Primarily there's a
21 November 3, 2014 e-mail exchange, and you're
22 listed as the recipient.

23 Do you see that?

24 A. I do. Yes, I see it.

1 Q. Okay. And the first question is
2 with respect to the substance of Mr. Glasgow's
3 November 3, 2014 e-mail. Your name is listed as
4 a recipient.

5 Do you recall receiving this
6 document?

7 A. I do, yes.

8 Q. Okay. And at this point,
9 November 3, 2014, were you aware of the
10 Legionella investigations?

11 A. Vaguely I recall potentially,
12 but ...

13 Q. What do you recall?

14 A. I guess I kind of thought it was
15 all the same scenario. See this -- I guess I'm
16 reflecting back on it. It looks like this is an
17 October 30th discussion he's talking about, but
18 he says -- and in the body of it, there was a
19 couple weeks ago an investigation.

20 Q. Okay. So I want you to tell me
21 what you recall about the Legionella
22 investigation that you were aware of as of the
23 date of this e-mail, November 3, 2014.

24 A. So my understanding was that

1 McLaren had reached out to the water plant or
2 Mike Glasgow, or got to Mike Glasgow at the
3 water plant, to bring their concerns and had
4 requested Mike's request for support in helping
5 find out what that problem was.

6 Q. Okay. Were you involved in any
7 communications with Mr. Glasgow or anybody else
8 at the water treatment plant about McLaren's
9 request?

10 A. Yes. Mike said he was going --

11 Q. What was your involvement?

12 A. So Mike said he was going there to
13 meet with them or had met with them, and that
14 was the support that he was going to provide.

15 Q. So Mr. Glasgow told you he was
16 going to go to McLaren. Was that before the
17 e-mail of November 3rd or after the e-mail of
18 November 3rd?

19 A. I don't recall.

20 Q. Okay. If you could turn to the
21 next page of Exhibit 53 on November 3, 2014 at
22 3:52 p.m. According to this document, you
23 replied to Mr. Glasgow, "Good job staying on top
24 of this from a city perspective as well as

1 assisting McLaren with their issue. Let us know
2 if the health department gets the case maps
3 done."

4 Do you see that?

5 A. Yes. Yes.

6 Q. Okay. So help me understand.

7 Mr. Glasgow told you he was going to McLaren to
8 assist in response to their request for support;
9 is that correct?

10 A. Correct.

11 Q. Did Mr. Glasgow go on his own
12 initiative, or was he directed to do that by
13 somebody at the Flint Water Treatment Plant?

14 A. I believe he went on his own
15 initiative. I think he got a call from McLaren.
16 And just as part of a customer outreach, they
17 went there to check it out.

18 Q. Okay. Did you talk to Mike about
19 his plans to go to McLaren?

20 A. I don't recall.

21 Q. And is it correct to say that this
22 e-mail of November 3rd is Mike reporting back
23 after his sight visit?

24 A. Yes.

1 Q. Okay. Do you recall -- and in
2 your response, you tell him, "Good job staying
3 on top of this. Let us know if the health
4 department gets the case maps done."

5 Do you know if -- did you ever
6 learn that the health department got their case
7 maps done?

8 A. I do not know.

9 Q. Okay. Did you have any other
10 communication with Mike Glasgow about his
11 communications with McLaren or visit to McLaren?

12 A. I don't recall any specific ones.

13 Q. Okay. Do you recall -- to your
14 knowledge, did the Flint -- did Mr. Henry ever
15 ask about testing Flint water for Legionella?

16 A. I don't recall him talking with me
17 about that.

18 Q. Do you recall him talking to
19 anybody at the Flint Water Treatment Plant about
20 that.

21 A. I don't know. No, I don't know
22 about that.

23 Q. Okay. Do you have any knowledge
24 concerning the Flint Water Treatment Plant

1 soliciting a bid to a laboratory -- a bid
2 request or a proposal request for Legionella
3 testing in late 2014?

4 A. I don't recall that.

5 Q. All right. Mr. Johnson, let me
6 ask you this: Did you speak to Mr. Croft --
7 first of all, who is Howard Croft?

8 A. He was my --

9 Q. Who was Howard --

10 A. He was DPW director, my
11 supervisor.

12 Q. He was your supervisor?

13 A. Yes.

14 Q. Okay. Did you ever speak to
15 Mr. Croft about any Legionella concerns with
16 Flint water?

17 A. I don't recall specific dates, but
18 I'm sure we did discuss this -- this e-mail.

19 Q. And did Mr. Croft give you any
20 instructions or directives concerning that
21 investigation?

22 A. Not that I recall. I mean, it
23 seemed like Mike was on it, and McLaren was
24 working on it. We didn't really have any need

1 to get involved in it.

2 Q. Okay. Well, let me ask you this
3 way then: You indicate that Mr. Glasgow was on
4 it. Is it fair to say that from your
5 perspective as the utilities administrator,
6 Mike Glasgow was the primary Flint person with
7 respect to any Legionella-related issue?

8 A. I guess I don't know if we had a
9 designated person for the point of contact. He
10 was the person that McLaren contacted, and that
11 would have been something he would have done as
12 part of his water quality supervisor role.

13 Q. Okay. Did you have any role with
14 respect to Mike's investigation or Mike's work
15 on that issue?

16 A. No.

17 Q. Okay. Did you communicate with
18 anybody at MDEQ concerning any Legionella issue
19 in Genesee County after April 2014?

20 A. I don't recall that, no.

21 Q. Okay. Are you the person that
22 would have communicated with MDEQ about
23 bacterial contamination concerns --

24 A. No.

1 Q. -- in Flint water?

2 A. No.

3 Q. Okay. Who would have been that --
4 who would have been in that role?

5 A. Mike Glasgow is my understanding
6 of it.

7 Q. Okay. All right. I'm going to
8 ask you a couple general questions then.

9 Do you know -- are you familiar
10 with the name Kelly Rossman-McKinney?

11 A. No.

12 Q. Okay. Do you know of a consulting
13 firm known as Truscott Rossman?

14 A. It doesn't ring a bell, no.

15 Q. Are you able to tell me who Jason
16 Lorenz is, L-o-r-e-n-z?

17 A. Yep. He worked for the emergency
18 manager I think as like the media or press
19 adviser or something like that. But he was
20 communications kind of person.

21 Q. Okay. Did you have any
22 interaction with Mr. Lorenz concerning his work
23 in communications?

24 A. Yes. If communications had to go

1 out, they went through his office, out to the
2 public, so to say.

3 Q. Okay. Did Mr. Lorenz consult with
4 you about the accuracy of statements that were
5 issued by his office?

6 A. Yes.

7 Q. Okay. And who in your department
8 would have reviewed Mr. Lorenz's statements
9 about Flint water quality before they were
10 issued to the public?

11 A. It would have been -- the actual
12 content or data would have come from the water
13 plant and come --

14 Q. Well, the water plant is a -- the
15 water plant is a physical structure.

16 Who within the water plant would
17 have been involved in reviewing statements
18 before they were issued through Mr. Lorenz?

19 A. Myself, Mike Glasgow, Brent Wright
20 may have all seen those kinds of things.

21 Q. Okay. Now, I'll indicate that
22 there were various press releases and statements
23 issued for Mr. Lorenz's office concerning the
24 safety of Flint water.

1 Do you -- are you familiar with
2 those assertions?

3 A. Yes. Some of them, yes.

4 Q. Okay. Do you know what, if
5 anything, was done to determine that the Flint
6 water was safe after April 2014 and before
7 October 2015?

8 MR. KUHL: Objection to form.

9 A. My understanding is the water
10 quality testing regimen was followed by the
11 water quality supervisor, and the DEQ standards
12 were passed down to him to make those tests, and
13 he performed those tests.

14 Q. And the water quality supervisor
15 was Mr. Glasgow?

16 A. Correct.

17 Q. Okay. Were you involved in any
18 discussions at the water treatment plant
19 concerning assertions that the Flint water was
20 safe?

21 A. Yes.

22 Q. And what was your involvement,
23 sir?

24 A. I would ask -- I guess I would

1 categorize it we'd ask Mike if that's accurate,
2 make sure that we're meeting all the safety
3 standards that DEQ prescribed.

4 Q. And when you say "safety
5 standards," are you referring to the drinking
6 water regulations?

7 A. Yes.

8 Q. Okay. And do you have any -- I
9 understand that you don't have a technical
10 background; is that right?

11 A. Correct.

12 Q. Do you have any understanding of
13 the requirements of those safety standards?

14 A. No, other than the requirements.
15 Some are requirements, some are suggestions, I
16 guess, the primary and second thing, but not
17 technical enough to perform a test.

18 Q. Let me ask you this: Did you have
19 any involvement in the laboratory processes at
20 the water treatment plant?

21 A. No.

22 Q. Who was the supervisor of the
23 laboratory at the water treatment plant --

24 A. Mike Glasgow.

1 Q. -- during that time?

2 A. Mike Glasgow.

3 Q. Okay. Thank you.

4 In the period of April 2014 until
5 your resignation in April 2015, did you
6 communicate with anybody at the Michigan
7 Department of Health and Human Services?

8 MR. ZEINEH: Objection as to form.

9 A. Not that I recall.

10 Q. During that same period,
11 April 2014 to the time of your resignation in
12 April 2015, did you have any communication with
13 members of the Genesee County Health Department
14 apart from the Mr. Henry?

15 A. I don't recall anybody else.

16 Q. Okay. Sir, I understand you're
17 not a technical person. Do you have any
18 understanding of the reasons for the
19 trihalomethane violation that was issued in
20 January of 2015?

21 A. Other than it was outside of the
22 DEQ parameters. That's the reason for the
23 violation. It exceeded those levels.

24 Q. Okay. Were you involved in any

1 discussions about whether -- about the issuance
2 of a public notice of that violation?

3 A. I was involved in that, yes.

4 Q. Okay. Was Ms. Rossman-McKinney
5 involved in those communications?

6 A. I don't recall McKinney.

7 Q. Okay. Now, was that a decision
8 that the water treatment plant made to issue
9 that notice, or is it something that was
10 required by MDEQ?

11 A. It was an MDEQ requirement to make
12 notice.

13 Q. Okay. And who were your primary
14 contacts at MDEQ?

15 A. Steve Busch and Mike Prysby.

16 Q. Did you -- did you have any direct
17 communications with Mr. Busch while you were
18 employed at that --

19 A. I did.

20 Q. Let me -- okay.

21 And how did you primarily
22 communicate with Mr. Busch?

23 A. He may have been cc'd on e-mails.

24 Q. Did you have any meetings with

1 Mr. Busch after April 2014?

2 A. Yes.

3 Q. Okay. And where did those
4 meetings take place?

5 A. They would have taken place at the
6 water plant generally or -- they may have been
7 at city hall once or twice, but the water plant
8 primarily.

9 Q. All right. How about Mr. Prysby?
10 Did you communicate directly with Mr. Prysby?

11 A. Yes.

12 Q. And did Mr. Prysby attend meetings
13 at the water treatment plant?

14 A. Yes.

15 Q. And do you recall any
16 communications with either Mr. Busch or
17 Mr. Prysby concerning Legionella or
18 Legionnaires' disease?

19 A. I don't recall there being
20 meetings, but there could have been.

21 Q. Okay. Were you involved in the
22 preparation of any documents in response to
23 questions that had been asked about Flint water
24 quality? There are many frequently asked

1 questions type documents. Were you consulted
2 about those?

3 A. Yes.

4 Q. Okay. And did you take steps to
5 ensure that the technical information in those
6 documents was accurate?

7 A. I took the step of getting that
8 information from the technical experts, Mike
9 Glasgow.

10 Q. Okay. So you relied on Mike
11 Glasgow to confirm the accuracy of any technical
12 information in those frequently asked questions
13 document; is that correct?

14 A. Correct.

15 MS. SMITH: I'm going to reserve
16 the remainder of my time with this
17 witness.

18 Mr. Johnson, thank you.

19 THE WITNESS: Thank you.

20 MR. STERN: Could we get a time
21 check?

22 MS. SMITH: For the record, that
23 was 30 minutes. I'd like to reserve the
24 remainder of my time.

1 MR. ERICKSON: Are we off the
2 record? Let's go off the record.

3 THE VIDEOGRAPHER: We're going off
4 the record. The time is 1:30.

5 (Recess taken.)

6 THE VIDEOGRAPHER: All right.
7 We're back on the record at 1:39.

8 - - -

9 CROSS-EXAMINATION

10 BY MR. ROBERTS:

11 Q. Hello, Mr. Johnson. My name is
12 Jared Roberts. I represent -- or I'm asking
13 questions today on behalf of the parties we're
14 generally describing as the MDEQ employee
15 defendants. That consists of Patrick Cook,
16 Stephen Busch, Liane Shekter Smith, and Michael
17 Prysby. So if I make future references to the
18 MDEQ employee defendants, are you going
19 understand who I'm referencing?

20 A. Yes.

21 Q. Thank you.

22 First, just on your general recall
23 about interactions with some of these
24 defendants, have you ever had any interactions

1 with Patrick Cook?

2 A. Limited.

3 Q. Limited.

4 Can you describe what you recall
5 about your interactions with Mr. Cook?

6 A. I believe he was at a meeting we
7 had one time at the water plant.

8 Q. So you believe the meeting was at
9 the water plant. Can you narrow it down to time
10 at all?

11 A. I cannot.

12 Q. Can you recall anything about the
13 subject matter of the meeting?

14 A. I cannot.

15 Q. Do you recall other people that
16 may have been there with Mr. Cook?

17 A. Steve Busch and Mike Prysby.

18 Q. Do you recall any specific
19 conversations that you had yourself with Patrick
20 Cook?

21 A. No.

22 Q. Do you recall ever having any
23 e-mails directly between yourself and Mr. Cook
24 or perhaps other people in that e-mail circle?

1 A. I don't recall any. He could have
2 been on some, though.

3 Q. Okay. Are there any documents
4 with respect to the Flint water quality that, as
5 you sit here today, you can attribute to
6 Mr. Cook?

7 A. No, not that I can recall any.

8 Q. Thank you.

9 Now, in terms of Liane Shekter
10 Smith, do you recognize that name?

11 A. Only in hindsight now.

12 Q. In hindsight, did you hear that
13 just from the names of the defendants in this
14 litigation?

15 A. Yes.

16 Q. I'm sorry. I couldn't hear that,
17 sir.

18 A. Yes.

19 Q. All right. Thank you.

20 So is it safe to say that you
21 don't recall any meetings with Liane Shekter
22 Smith?

23 A. I don't recall any, no.

24 Q. Are there any -- as you sit here

1 today, are there any documents that you can
2 attribute to Liane Shekter Smith?

3 A. Not that I recall.

4 Q. Can you recall Liane Shekter Smith
5 ever directing your conduct in connection with
6 your role at the water treatment plant?

7 A. No.

8 Q. With respect to the meeting that
9 you testified about in June 2013, you mentioned
10 Mr. Busch was there and Mr. Prysby was there.

11 Do you recall that general
12 testimony?

13 A. I do.

14 MR. ERICKSON: Object to the form.

15 I think he talked about --

16 Q. I believe you described that --

17 MR. ZEINEH: Mr. Roberts, one
18 moment, please.

19 (Reporter clarification.)

20 MR. ERICKSON: My objection was
21 object to the form. I believe he
22 testified about more than one meeting in
23 June.

24 MR. ROBERTS: Okay. Maybe I can

1 straighten that out. Just strike the
2 question.

3 BY MR. ROBERTS:

4 Q. Mr. Johnson, you testified -- I
5 believe you described a meeting in June 2013 as
6 a, quote, first meeting that you had with the
7 DEQ.

8 Does that sound correct?

9 A. Yeah, there was a first meeting,
10 but I don't -- what was the question?

11 Q. The question was: You described a
12 June 2013 meeting with the DEQ, and you
13 mentioned that Mr. Busch and Mr. Prysby were
14 present at that meeting, as you recall.

15 Does that sound correct?

16 A. Yes.

17 Q. I also recall that you testified
18 that that was the first meeting that you were
19 involved with with DEQ personnel.

20 Is that correct?

21 MR. GAMBLE: Object to form.

22 A. As I recall, yes.

23 Q. And I believe you either directly
24 testified or by implication testified that --

1 well, let's see.

2 Do you recall whether Patrick Cook
3 would have been at that June 2013 meeting?

4 A. That could be the one, yes. There
5 were a lot of folks I didn't know there at that
6 meeting.

7 Q. Now, you also testified that the
8 city did not do that 60- to 90-day test run, and
9 you stated that the DEQ said that the city
10 didn't have to.

11 Do you recall that testimony?

12 A. I do.

13 Q. Who at -- do you recall who at the
14 DEQ you would have discussed that with?

15 A. It would have been in a meeting
16 with Mike Busch and Steve Prysby, but I -- or
17 Steve Busch and Mike Prysby.

18 Q. Can you attribute that statement
19 to any particular individual?

20 A. I cannot.

21 Q. Now, in general -- I'm just going
22 to ask some general questions. And, again, just
23 like the attorney who just spoke with you, I
24 missed the first couple minutes of your

1 deposition because we were sent briefly to the
2 wrong place. So I don't mean to ask you things
3 that you've already testified to.

4 However, just in general terms,
5 did you or your water plant colleagues request
6 assistance from MDEQ people once it became
7 apparent that there was a problem with the Flint
8 River water?

9 A. I guess I don't know if requesting
10 assistance is appropriate. They were in
11 communication with the DEQ from the start until
12 the whole time, is my understanding.

13 Q. Did you -- in general terms, did
14 you find the MDEQ responsive to any requests you
15 may have made for information or assistance?

16 A. Yes.

17 Q. Do you recall, would your
18 department ask MDEQ people questions about water
19 quality issues or how to address or improve
20 them?

21 A. Yes.

22 Q. As you recall --

23 A. As I recall.

24 Q. -- were MDEQ employees generally

1 responsive to those questions?

2 A. Yes.

3 Q. Is it fair to say that the city of
4 Flint was required to comply with whatever water
5 quality standards may have been in place when it
6 was distributing water?

7 A. Yes.

8 Q. So is it fair to say that those
9 would be state standards, federal standards, or
10 both?

11 A. My understanding is they were
12 federal standards enforced by the state.

13 Q. And then -- and implemented by the
14 city of Flint; is that fair?

15 A. Yeah. The processes we were told
16 to run, we ran.

17 Q. Do you recall any prior meetings
18 prior to June 2013 with MDEQ people at the Flint
19 Water Plant?

20 A. I don't recall any specific ones,
21 but some of those could be out of sequence in my
22 memory.

23 Q. Okay. Was there ever a discussion
24 that you can recall that concerned using Flint

1 River water initially just to blend with KWA or
2 Detroit water initially?

3 A. Yes.

4 Q. Can you elaborate on that? Where
5 does that fall in the general sequence of
6 possibilities or plans you were discussing,
7 please?

8 A. I would -- it would be early on
9 before -- before deciding to even go with KWA, I
10 think.

11 Q. And so the -- using some Flint
12 River water was discussed as a possible -- just
13 to blend or reduce the use of those outside
14 sources for some time?

15 A. That's correct.

16 Q. Would that have been a temporary
17 or stopgap type of measure?

18 A. That would have been a cost-saving
19 measure. It would have been ongoing probably.

20 Q. So, in other words, one of the
21 possibilities if, for instance, the city went
22 with KWA, is that they would purchase from KWA
23 and perhaps blend in some Flint River water?

24 A. That's correct, as well as the

1 city of Flint being on Detroit system and
2 blending with Detroit system.

3 Q. Then did that blending -- what was
4 discussed, did that ever occur?

5 A. That did not occur.

6 Q. Do you recall either Mr. Prysby or
7 Mr. Busch either at that June 2013 meeting or
8 other times discussing additional treatment
9 requirements that might be necessary if the city
10 used the Flint River?

11 A. Yes.

12 Q. Would they have or you have
13 discussed changes or increases in microbial
14 risks?

15 A. I don't know. I assume so. There
16 was disinfection questions.

17 Q. There was different what
18 questions? I'm sorry.

19 A. Disinfection questions. So I'm
20 assuming that applies to that.

21 Q. So when you say different
22 "disinfection questions," to a layperson, that
23 would mean you need to do different things to
24 the water depending on the source; is that

1 correct?

2 A. Correct.

3 Q. And did you have to do more to it
4 with the Flint River than the Detroit or Lake
5 Huron source that were under discussion?

6 A. That's my understanding, yes.

7 Q. Were there discussions with MDEQ
8 employees regarding additional regulatory
9 requirements that might be triggered if Flint
10 water was used, Flint River water?

11 A. Yes.

12 Q. Can you expand on that at all?

13 A. Some of it was technical talk, but
14 I recall them discussing some kind of bin
15 sampling or something that had to be done in
16 addition because of the Flint River being the
17 source, but I don't know what that term even
18 meant.

19 Q. And did you say bin as b-i-n?

20 A. That would be what I heard.

21 Q. Okay. So you're recalling that
22 Flint water would require an additional type of
23 sampling that you're saying is bin, b-i-n,
24 sampling, correct?

1 A. From my limited technical
2 knowledge, that's what I heard. That may be
3 totally inaccurate. But my understanding was
4 there needed to be more sampling of the Flint
5 River and potentially more chemical addition to
6 the Flint River.

7 Q. So the chemical addition -- so, in
8 other words, more enhancements to the water that
9 would be applied at the Flint Water Treatment
10 Plant?

11 A. Yes.

12 Q. And would that include softening?

13 A. Yes.

14 Q. Was there ever an issue discussed
15 with respect to Flint River water and its
16 turbidity?

17 A. Yes.

18 Q. What do you recall about that?

19 A. Just that there was discussion
20 that the water would be more turbid.

21 Q. And for laypeople, that means
22 cloudier?

23 A. Yes.

24 Q. And if the water is cloudier, does

1 that require more or enhanced treatment?

2 A. It's my understanding, yes.

3 Q. Was there ever a discussion
4 regarding -- I believe you may have testified to
5 this, and I don't want to put words in your
6 mouth. But was there discussion concerning an
7 increased risk of the byproduct of the
8 disinfection process?

9 A. I don't recall that prior to the
10 startup. That was a situation we had after.

11 Q. And so the references to those
12 TTHMs, is that a byproduct of a disinfection
13 process?

14 A. Yes.

15 Q. Are there others that you can
16 think of, or is that the only one that has come
17 up here?

18 A. That's the only one I knew of.

19 Q. So do you recall whether
20 discussion of TTHMs or other byproducts occurred
21 with the MDEQ employees before the switch to
22 Flint water?

23 A. I don't recall any.

24 Q. But you did testify that that

1 discussion did come up at some point, correct?

2 A. Right. We were -- we had a TTHM
3 violation. That's when I recall learning what
4 that was.

5 Q. And I believe you just indicated
6 that that was 2015 when you learned of the TTHM
7 violations?

8 A. I don't know the exact dates. I
9 thought it was before that, but ... I'm pretty
10 sure it was before. I thought it was the summer
11 of '14 we had a TTHM violation.

12 Q. Thank you.

13 Were you aware in 2013 and 2014
14 that the Flint Water Treatment Plant would be
15 required to meet standards regarding removing
16 viruses from the Flint River water such as the
17 Legionella?

18 A. No.

19 Q. And so before the switch, the
20 issue of Legionella was not something that you
21 recalled discussing within the water plant?

22 A. Correct.

23 Q. Were you aware that the water
24 treatment -- during that time frame, that's 2013

1 and 2014, were you aware that the water
2 treatment plant would have to basically maintain
3 a residual disinfectant concentration throughout
4 the distribution system?

5 A. Yes.

6 Q. Can you tell me what that means,
7 in your words?

8 A. So my understanding of that was
9 they needed to add enough chlorine to be in the
10 system throughout the pipes throughout the city.
11 That's a set level. I'm not sure what that
12 level was.

13 Q. You, in your water plant, did you
14 understand that with the Flint -- that the Flint
15 Water Treatment Plant would be subject to a
16 different lead and copper monitoring program
17 with the Flint River water?

18 A. I did not know what that was going
19 to be, no.

20 Q. Well, that may be -- maybe I
21 didn't ask the question very well.

22 Were you aware that there was
23 going to have to be a different lead and copper
24 monitoring system as opposed to what exactly

1 would be different about it? So I'll ask that
2 again.

3 Were you in 2013 and 2014 aware
4 that if the plant switched to the Flint River
5 water, it would be subject to a different lead
6 and copper monitoring system than, for example,
7 they had previously with Detroit?

8 A. Yes.

9 Q. But as you sit here today, do you
10 have any recall of what would be different about
11 it once it became Flint water?

12 A. That we would have to do more
13 locations of samples is my recollection.

14 Q. So that would mean just different
15 point sources throughout the city?

16 A. Correct. My understanding was
17 that we were sampling some number on Detroit
18 system. And when we began our own system, we
19 would have to sample more locations. So if
20 there was ten on Detroit, we would have sampled
21 100 on Flint or something. I don't know the
22 numbers, though.

23 Q. Okay. And so if it was Flint,
24 they would do it by address, or were the

1 locations already there, or would they just say,
2 "We need ten times the number of samples"?

3 A. I don't recall how -- and that
4 would have been directed to Mike Glasgow.

5 Q. Okay. And who would have been --
6 who would have come up with that number in terms
7 of how many more samples or their locations?
8 Was that Mr. Glasgow and Flint?

9 A. No. My understanding was the DEQ
10 told Mike what the sampling protocol had to be.

11 Q. Okay. Do you have any knowledge
12 of whether -- who or anybody coming up with the
13 specifics of where to actually take those tests?

14 A. I do not.

15 Q. Do you know who might know that?

16 A. It would have been Mike and the
17 DEQ. Mike Glasgow and the DEQ would have, I
18 assume. That's an assumption, though.

19 Q. Thank you.

20 Now, as you understand it, was the
21 city of Flint ultimately responsible for
22 deciding whether corrosion control would be
23 added as part of the treatment of the Flint
24 River water?

1 A. That's not my understanding.

2 Q. What is your understanding?

3 A. That the DEQ would prescribe to us
4 what we had to do in accordance with the
5 drinking water standards, and that's what we
6 instructed the engineers to design and the
7 contractors to build.

8 Q. And so because the DEQ wasn't
9 requiring at the time the corrosion control,
10 from your position you do not view that as city
11 of Flint's responsibility to have added it?

12 A. Correct.

13 Q. Do you recall the MDEQ ever
14 prohibiting the city of Flint from adding
15 corrosion control chemicals to the Flint water?

16 A. I don't recall a prohibition about
17 it.

18 Q. As you understand it, was Flint
19 free to make that decision if it chose?

20 A. No.

21 Q. Wasn't it -- weren't phosphates
22 sort of priced out in your utility price study
23 that you mentioned previously?

24 MR. ZEINEH: Object as to form,

1 foundation.

2 A. They were, yes. Yes, those costs
3 were built into some of the potential expenses.

4 Q. And then somebody decided that
5 they weren't necessary, at least at the outset;
6 is that correct?

7 A. Yeah. We were informed by the DEQ
8 they were not necessary at the outset.

9 Q. Then who within the city of Flint
10 decided at that point not to use the phosphates
11 or other corrosion control?

12 MR. ZEINEH: Just object as to
13 form, foundation.

14 A. I guess the decision was the DEQ's
15 not to use it. I don't know if we could have
16 just added a chemical without that
17 authorization.

18 Q. Well, you testified previously
19 that you were aware of Mr. Glasgow's staffing
20 concerns right when the plant would begin
21 operating with the Flint River water in April of
22 2014; is that correct?

23 A. Yes.

24 Q. Do you recall what you did to

1 respond to Mr. Glasgow's raising the staffing
2 concerns?

3 A. Yes. I informed him that we had
4 plenty of funding to cover the overtime that
5 would be necessary to cover those vacant shifts.

6 Q. And so the initial response was
7 you would just have the people that you had work
8 overtime?

9 A. Correct.

10 Q. And then what was -- was that the
11 only response?

12 A. Yes.

13 Q. So was there ever any time where
14 the city of Flint was adding more people or
15 getting more certified operators?

16 A. Yes. That was an ongoing thing
17 from before his concern was voiced and after his
18 concern was voiced.

19 Q. Do you have any knowledge about
20 whether the water treatment plant had enough
21 certified operators to satisfy state regulations
22 for full-time operation before the use of the
23 Flint River began?

24 A. My understanding was that we did

1 have enough certified operators on staff.

2 Q. Now, I understand you testified
3 that in general terms -- or you don't have a
4 highly technical background. So if I ask you a
5 question that's more on the technical side, my
6 apologies.

7 But in the meantime, do you
8 understand or is it true that it is a common way
9 to reduce TTHMs by doing regular flushing and
10 decreasing water detention time in the system?

11 MR. ZEINEH: I just object as to
12 form, foundation, and it calls for an
13 expert opinion.

14 A. Yeah, I don't know if that's
15 common or not. No. Reducing the detention time
16 is a solution.

17 Q. Explain reducing detention time
18 just in lay terms, if you can, please.

19 A. Water not being in the
20 distribution system longer, so using more water.

21 Q. And so this flushing operation, is
22 that something users do at the back end or at
23 the user end, or is this something that a water
24 treatment plant can itself do?

1 A. I guess I don't understand who the
2 back end is.

3 Q. Well, when I say "back end," say
4 I'm a homeowner and I live in the city of Flint
5 and I turn my tap on, water flows through the
6 pipes and presumably at least something, perhaps
7 my service line, if I run it long enough gets
8 flushed.

9 And so when people -- when I see
10 references to the term "flushing," I'm curious.
11 Is that something that can be done systemwide,
12 or does it just happen over time through end
13 users?

14 MR. STERN: Object to form.

15 MR. ZEINEH: Concur.

16 A. Theoretically opening more faucets
17 would use more water, yes, which would reduce
18 the detention time.

19 Q. Is there anything that the plant
20 itself can do that people would describe as
21 flushing?

22 A. Opening the hydrants, that would
23 be one of their mechanisms.

24 Q. Now, do you recall whether you

1 ever spoke with anybody at the MDEQ regarding
2 the Legionella issue?

3 A. I don't recall specifics. I'm
4 sure it would have come up. I don't recall
5 specifically.

6 Q. Do you think it would have been
7 around March 2015 when you -- I believe you
8 testified that that was when there was notice of
9 a violation.

10 MR. ZEINEH: Just object as to
11 form, foundation.

12 A. I don't recall, but I don't
13 believe I would have in 2015, in March 2015.

14 Q. When do you think it might have
15 been?

16 MR. ZEINEH: Again, form.

17 A. Again, I don't remember any
18 specific conversations about Legionella with the
19 DEQ.

20 Q. Do you recall any time when
21 anybody on the staff from LAN suggested to you
22 that the Flint Water Treatment Plant was not
23 producing safe drinking water?

24 A. No.

1 Q. Was there ever a time when any of
2 the staff from Veolia suggested to you that the
3 Flint Water Treatment Plant was not producing
4 safe drinking water?

5 A. No.

6 Q. Do you recall any times where any
7 of your staff at the Flint Water Treatment Plant
8 suggested to you that the plant was not
9 producing safe drinking water?

10 A. No.

11 MR. THOMPSON: Thank you.

12 We'll reserve the balance of our
13 time. I have nothing further at this
14 time.

15 Thank you, Mr. Johnson.

16 THE VIDEOGRAPHER: Go off? Going
17 off the record, the time is 2:07.

18 (Recess taken.)

19 THE VIDEOGRAPHER: We're back on
20 the record at 2:13.

21 - - -

22 CROSS-EXAMINATION

23 BY MR. KIM:

24 Q. Good afternoon, Mr. Johnson. My

1 name is Bill Kim. I'm counsel for the city of
2 Flint.

3 Are you familiar with the term
4 "micromanagement"?

5 A. Yes.

6 Q. What does that term mean to you?

7 A. Kind of oversupervising
8 subordinate employees.

9 Q. What would be some specific
10 examples of micromanagement?

11 A. Maybe telling them which way to
12 take a route around the block.

13 Q. As a supervisor, do you believe
14 that you've ever -- you know, that you've
15 engaged in micromanaging your subordinates?

16 A. Not as an initial step.

17 Q. So not as an initial step. Can
18 you expand on that?

19 A. I guess if somebody is not doing
20 their job right, I may have to tell them exactly
21 how to do it right.

22 Q. Okay. Now, you've testified that
23 Brent Wright reported to you as the water
24 treatment plant manager; is that correct?

1 A. Correct.

2 Q. Did you ever have any reason to
3 doubt that Brent Wright was capable of doing his
4 job?

5 A. No.

6 Q. Did you have any reason to believe
7 that he needed extra supervision in doing his
8 job?

9 A. No.

10 Q. Okay. Did Michael Glasgow report
11 to you?

12 A. He reported on the chart to Brent,
13 but we talked at meetings together freely. He
14 didn't have to go through Brent to talk to me.

15 Q. Okay. Did you have any reason to
16 believe that Mike Glasgow was unable to do his
17 job?

18 A. No.

19 Q. Did you believe that any
20 additional closer supervision was required in
21 his case?

22 A. No.

23 Q. As the utilities administrator,
24 did you regularly delegate tasks to your

1 subordinates?

2 A. Yes.

3 Q. Would you be -- would it be fair
4 to say that a large portion of your job involved
5 delegating tasks to your subordinates?

6 A. Yes.

7 Q. Earlier the counsel for LAN, I
8 guess, posited that Warren Green had stated that
9 he had -- he had had conversations with you
10 regarding corrosion control after the June --
11 the June 26 or June 29th meeting.

12 Do you recall that?

13 A. I don't recall any specific
14 conversations.

15 Q. Do you recall that counsel for LAN
16 asked you about that earlier today?

17 A. Yes, yes.

18 Q. And do you recall that you said
19 that you had no recollection and that you
20 couldn't think of any reason to contradict that
21 statement; is that --

22 MR. GAMBLE: Objection to form.

23 Q. Do you recall saying that you
24 couldn't find any reason to contradict that

1 statement?

2 MR. GAMBLE: Objection.

3 A. Yes, I had no reason.

4 Q. Would it be fair to say that you
5 had no reason to contradict that statement
6 because you had no recollection of it at all?

7 A. That's correct, I don't recall
8 that.

9 Q. So it was equally as likely that
10 if you had no reason to contradict it, you also
11 have no reason to support it?

12 MR. GAMBLE: Objection to form.

13 A. That's correct.

14 Q. Okay. If you can -- I'd like to
15 have you take a look at what has been marked as
16 Exhibit Number 90.

17 - - -

18 (Johnson Deposition Exhibit 90 marked.)

19 - - -

20 BY MR. KIM:

21 Q. I'm going to state that this is
22 a -- these are a series of questions and answers
23 drafted by Howard Croft, the director of the
24 Flint department of public works. After you

1 review this, would you tell me if you have any
2 reason to doubt that statement. This is Bates
3 number COF_FED_0030695.

4 A. I guess I have no reason to doubt
5 it. I don't recall it.

6 Q. Do you recall -- now, this --
7 these questions and answers refer to a meeting
8 that was held on June 29, 2013 at the Flint
9 water plant involving interested parties,
10 including the city of Flint, Genesee County
11 drain commissioner, the Michigan Department of
12 Environmental Quality and Lockwood, Andrews &
13 Newnam.

14 Do you recall this meeting?

15 MR. GAMBLE: Objection to form.

16 Objection; foundation.

17 A. The June 29th meeting?

18 Q. Yes.

19 A. Yes.

20 Q. Now, looking at the list of -- on
21 the first page, you can see a list of names in
22 the middle of that page.

23 A. Yes.

24 Q. Were all those persons present for

1 that meeting, to the best of your recollection?

2 MR. GAMBLE: Objection;

3 foundation.

4 A. I don't recall a Stephen Ashford,
5 but I don't know if he was there or not there.

6 Q. Okay. Were you present at this
7 meeting?

8 A. Yes.

9 Q. Okay. Looking below that, you see
10 a list of topics that were for the agenda; "The
11 purpose and agenda of this meeting was to
12 determine the feasibility of the following
13 items."

14 Do you recall that being the
15 purpose and agenda of that meeting?

16 MR. GAMBLE: Objection;

17 foundation.

18 A. Yes.

19 Q. I'm going to just go through the
20 list of determinations that are listed in here,
21 and I'm going -- and I want you to answer
22 whether or not that you agree that that was the
23 determination that was reached by -- at that
24 meeting.

1 First, that the Flint River would
2 be more difficult to treat but is viable as a
3 source; is that a true statement?

4 A. Is that somewhere in the document?
5 Is that somewhere in the document?

6 Q. Starting right there (indicating).

7 A. Got it.

8 Q. What I'm asking is: Do you recall
9 that statement being an accurate recollection or
10 accurate -- an accurate statement of the
11 determination that was reached at the June 29th
12 meeting?

13 A. Yes.

14 MR. GAMBLE: Object to form.

15 Q. So you recall at the June 29th
16 meeting, that the determination was made that
17 the Flint River would be more difficult to treat
18 but is viable as a source?

19 A. Yes.

20 Q. At that same meeting, was it --
21 was the determination reached that it was
22 possible to engineer and construct the upgrades
23 needed for the treatment process?

24 A. Yes.

1 Q. Number 3, the same question, was
2 that determination also reached at the June 29th
3 meeting?

4 MR. GAMBLE: Objection; form.

5 A. Yes.

6 Q. Same question for number 4 on the
7 next page?

8 A. Yes. That was a conclusion met.

9 Q. And number 5?

10 A. Yes.

11 Q. And number 6?

12 MR. GAMBLE: Objection; form,
13 foundation.

14 A. Yes.

15 Q. Okay. Now, do you recall that
16 there were any persons at that meeting who
17 disagreed with any of those conclusions?

18 MR. GAMBLE: Objection; form,
19 foundation.

20 A. No.

21 Q. So there was no -- to the best of
22 your recollection, nobody who was present at
23 that meeting was dissenting or had a different
24 opinion as to any of those six conclusions?

1 A. That's correct.

2 - - -

3 (Johnson Deposition Exhibit 91 marked.)

4 - - -

5 BY MR. KIM:

6 Q. Okay. If I can direct your
7 attention to what has been marked as Exhibit 91.
8 This was listed as produced as Croft -- I'm just
9 going to go with 97 with a whole bunch of zeros
10 in front of it.

11 MR. KIM: Does anybody object to
12 that description of this document?

13 BY MR. KIM:

14 Q. This document -- does this
15 document appear to be an e-mail that you sent on
16 November 4, 2013?

17 A. Let me give it a read here.

18 Q. Do you need me to repeat the
19 question, Mr. Johnson?

20 A. I'm still reading it.

21 Q. Okay.

22 A. Yes.

23 Q. Okay.

24 A. Go ahead. Ask your question.

1 Q. So this -- you'd agree this
2 document appears to be an e-mail that you sent
3 on November 4, 2013?

4 A. Yes.

5 Q. And do you recall sending this
6 e-mail?

7 A. I did send this e-mail, yes. I
8 don't know when. Obviously the 4th, but ...

9 Q. Okay. And you sent this e-mail to
10 Gerald Ambrose and Howard Croft?

11 A. Yes.

12 Q. And does this -- does this e-mail
13 express that the contract with LAN was "to check
14 the feasibility and develop the cost estimates
15 for necessary upgrades to make the water plant
16 our primary drinking water source"?

17 A. That was the initial contract,
18 yes.

19 Q. And is that -- does that
20 accurately reflect your understanding of their
21 contract at that time?

22 A. Up until that point, yes.

23 Q. And then did you understand --
24 then does the e-mail say that the change order

1 authorizes them to do the final design and
2 construction engineering?

3 A. Yes.

4 Q. And was that your understanding of
5 what the change order was going to -- was going
6 to provide for?

7 A. Yes.

8 Q. And as a -- would it be accurate
9 to state that this e-mail expresses your
10 confidence in LAN?

11 A. Yes.

12 Q. Did you have confidence in LAN's
13 capabilities?

14 A. I did.

15 Q. And that would be in the time
16 frame of November of 2013?

17 A. Yes.

18 Q. Between November of 2013 and April
19 of 2014, did you have any -- did you have any
20 reason to -- develop any reason to doubt their
21 professional capabilities?

22 A. No.

23 Q. Okay. If I can direct your
24 attention to Brent Wright Exhibit Number 81 in

1 the Brent Wright binder.

2 Okay. Mr. Johnson, would you
3 agree this exhibit appears to be the summary of
4 a meeting that was held on November 7, 2014?

5 A. That's what's stated on it, yes.

6 Q. And does it -- was this meeting
7 held at the -- does this summary refer to a
8 meeting that was held of the offices of LAN in
9 Okemos?

10 A. Yes.

11 Q. And does this summary list persons
12 there -- the people who were at this meeting?

13 A. Yes.

14 Q. And were you -- were you at this
15 meeting on November 7, 2014?

16 A. Yes.

17 Q. And if you'd take a look at the
18 people who are listed on the roster, do you
19 recall those individuals being at this meeting?

20 A. Again, I don't recall Pat Cook
21 being there, but he could have been there.

22 Q. Okay. So you have memories of
23 Warren Green being there?

24 A. Yes.

1 Q. Samir Matta?

2 A. Yes.

3 Q. Mike Prysby?

4 A. Yes.

5 Q. And Steve Busch?

6 A. Yes.

7 Q. Okay. If you could skip ahead --
8 let's see. That would be the third page of the
9 summary under the heading that's labeled
10 "Comments."

11 And the first sentence of the
12 comments reads, "DEQ representative Steve Busch
13 and Mike Prysby voiced satisfaction that we are
14 addressing all of the areas of concern."

15 Do you see that?

16 A. Yes.

17 Q. Does that match with your
18 recollections of the November 7th meeting?

19 A. Yes.

20 Q. Did the DEQ representatives
21 present express that there were any other
22 concerns that needed to be addressed?

23 A. I don't recall any.

24 Q. Did the LAN representatives at

1 that meeting raise any issues of other issues
2 that needed to be addressed?

3 A. I don't recall any other issues
4 raised.

5 - - -

6 (Johnson Deposition Exhibit 92 marked.)

7 - - -

8 BY MR. KIM:

9 Q. Okay. I'm going to now direct
10 your attention to the exhibit that's been marked
11 as Exhibit 92.

12 Would you agree that this is an
13 e-mail that was sent by Henry James to yourself
14 on February 6, 2015?

15 A. Yes.

16 Q. And does this e-mail concern the
17 FOIA request that was made by Mr. Henry?

18 A. Yes.

19 Q. And do you recall receiving this
20 e-mail?

21 A. Yes.

22 Q. Okay. So was this the first time
23 that you were aware of the FOIA request from the
24 Genesee County Health Department?

1 A. I don't recall the sequence of
2 that time, but there was a discussion between me
3 and Howard about a request.

4 Q. So was this the first time that
5 you were aware of the request, or were you made
6 aware of that request prior to this e-mail?

7 A. I don't recall the dates.

8 Q. Okay. Do you remember if the
9 Genesee County Health Department had
10 communicated with you about this FOIA request
11 prior to this e-mail?

12 A. No. Any communication would have
13 been through Mr. Henry or Howard.

14 Q. Okay. So do you recall receiving
15 any communications from Mr. Henry prior to this
16 e-mail?

17 A. I don't.

18 Q. And just to beat a dead horse, you
19 received this e-mail on February 6th; is that
20 correct?

21 A. Yes.

22 - - -

23 (Johnson Deposition Exhibit 93 marked.)

24 - - -

1 BY MR. KIM:

2 Q. Okay. If I could direct your
3 attention to Exhibit Number 93.

4 Is this an e-mail from Rob -- does
5 this appear to be an e-mail from Rob Bincsik to
6 Mr. Henry?

7 A. Yes.

8 Q. And were you cc'd on this e-mail?

9 A. Yes.

10 Q. And was this e-mail sent on
11 Monday, February 16th?

12 A. Yes.

13 Q. And was -- did this e-mail provide
14 a copy of the distribution system map that
15 the -- to Mr. Henry?

16 A. Yes. It says it was attached to
17 it.

18 Q. If you'd like to review the whole
19 e-mail chain.

20 So was a distribution system map
21 provided to Mr. Henry on the 16th of February?

22 A. Yes, it was.

23 Q. And would that distribution system
24 map have been within the area of responsibility

1 of Robert Bincsik?

2 A. Yes.

3 Q. Would that map have been something
4 that you would have personally been responsible
5 for maintaining?

6 A. No.

7 - - -

8 (Johnson Deposition Exhibit 95 marked.)

9 - - -

10 BY MR. KIM:

11 Q. Okay. If I could direct your
12 attention to what was marked as Exhibit 95.

13 MR. ERICKSON: Did we skip 94?

14 MR. KIM: We did skip 94, yes.

15 - - -

16 (Johnson Deposition Exhibit 103 marked.)

17 - - -

18 BY MR. KIM:

19 Q. Now, I believe -- I didn't catch
20 what number this was assigned earlier, so I
21 apologize. But this was an e-mail that was
22 referred to earlier regarding LeeAnne Walters'
23 residence at 212 Browning.

24 Do you -- do you recognize this

1 A. Yes.

2 Q. You don't know if there's other
3 types, right?

4 A. Yeah.

5 Q. Do you know if Veolia's
6 recommendation pertained to polyphosphates as
7 opposed to orthophosphates?

8 A. I do not know.

9 Q. Do you know if there's more than
10 one way to implement corrosion control
11 treatment?

12 A. I do not know if there is.

13 Q. Earlier you testified today that
14 DEQ didn't require Flint to undergo a 60- to
15 90-day test run prior to the water switch.

16 Do you recall that testimony?

17 A. I do.

18 Q. Do you recall if there is any
19 state or federal regulation that would require
20 Flint to undergo a 60- or 90-day test run of the
21 plant?

22 MR. NOVAK: Objection.

23 A. I don't know of any.

24 Q. I believe you testified earlier